

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Blackstone Gas Company)	
pursuant to General Laws Chapter 164, § 94,)	
and 220 C.M.R. §§ 5.00 et seq., for a General)	D.T.E. 01-50
Increase in Gas Rates.)	
)	

**THE ATTORNEY GENERAL’S OBJECTION
TO BLACKSTONE’S MOTION TO UPDATE RATE CASE EXPENSES AND
MOTION TO STRIKE PORTIONS OF THE COMPANY’S REPLY BRIEF,
OR, IN THE ALTERNATIVE, TO REOPEN THE RECORD**

_____The Attorney General (1) objects to the Motion to Update Rate Case Expenses (“Expense Motion”) of Blackstone Gas Company (“Blackstone” or the “Company”) and (2) moves, pursuant to Mass.R.Civ.P. 12 and 220 C.M.R. §§ 1.04(5) and 1.11(7) and (8), that the Department of Telecommunications and Energy (“Department”) strike the portions of the Company’s Reply Brief which reference extra-record statements and testimony, or, in the alternative, reopen the record to allow discovery with respect to extra-record statements and testimony cited, referenced or otherwise relied upon in the Company’s Reply Brief.

I. THE DEPARTMENT SHOULD DENY THE COMPANY’S EXPENSE MOTION

On October 15, 2001, Blackstone filed a Motion to Update Rate Case Expenses. The Company, however, does not provide any evidentiary support for its request to increase rate case expenses from \$60,000 to \$106,420.¹ The Company claims that the request is necessary because

¹ In Attachment 2 of its Reply Brief, Blackstone proposes to increase its normalized rate case expense to \$21,284 (up from \$12,000). Assuming the Company has normalized the newly proposed expense amount over the same 5-year period as it requested in its pre-filed testimony, the new proposed expense amount appears to be \$106,420 [\$21,284 x 5], up from \$60,000 [\$12,000 x 5].

“the Attorney General raised many issues for the first time in his Brief after the close of the hearing which caused rate case expenses to increase significantly.” Motion, p. 1. Blackstone’s Motion is without merit. The Attorney General has already addressed Blackstone’s claim of “first time” arguments, noting that the filing of a rate case puts a company on notice that every element of the rate request is at issue.² See AG Reply Br. at 2; AG Objection and Cross Motion; see also *Boston Gas Company*, D.P.U. 96-50-C (Phase I), p. 46 (1997) citing *Bay State Gas Company*, D.P.U. 1535-A at 17 (1983)(“the filing of a general rate case places a company on notice that every element of the rate request is at issue”). Blackstone has not set forth any legitimate reasons why the Department should allow it to update its rate case expenses at this late date.³ The Department should deny the Expense Motion.

II. THE DEPARTMENT SHOULD STRIKE PORTIONS OF THE COMPANY’S REPLY BRIEF

In its Reply Brief, Blackstone continues to cite, reference or otherwise rely upon extra-record statements and testimony, including those of the Company’s President, James Wojcik. The Attorney General previously addressed this issue in his Objection and Cross Motion where he moved to strike portions of the Company’s Initial Brief because of the Company’s reliance upon extra-record statements and testimony that have not been the subject of discovery and

² The Attorney General filed with his Reply Brief his Objection to Blackstone’s Motion to Supplement the Record and Cross Motion to Strike Portions of the Company’s Initial Brief, or in the Alternative, to Reopen the Record (“Objection and Cross Motion”).

³ The Company originally requested a **\$220,067** increase. Now in its Reply Brief, the Company has lowered its request to \$141,328, a 36% decrease in the amount originally requested. Any increase in rate case expenses is more likely related to the Company’s attempt to bolster an unjustified rate increase than to any actions of the Attorney General.

cross-examination.⁴ The Attorney General now moves that the Department strike those portions of the Company's Reply Brief which cite, reference or otherwise rely upon extra-record statements and testimony⁵ upon the same grounds as those set forth in his **October 9, 2001**, Objection and Cross Motion---mainly, numerous statements contained in the "affidavit" are not supported by the record and indeed are directly contradicted by the record and that allowing Blackstone to cite, reference or otherwise rely upon extra-record statements and testimony violates the Attorney General's due process rights and the Department rules and precedent. *See MediaOne/New England Telephone*, D.T.E. 99-42/43, p. 17-18 (1999); *Boston Edison Company*, D.P.U. 90-335, p. 7-8 (1992); *Payphone Inc.*, D.P.U. 90-171, p. 4-5 (1991); *see also* G.L. c. 30A, § 11; and 220 C.M.R. §§ 1.11(4), 1.11(7); and 1.11(8).

WHEREFORE the Attorney General requests:

1. That the Department deny the Company's Motion to Update Rate Case Expenses;
2. That the Department strike the portions of the Company's Reply Brief which rely upon extra-record statements and testimony;
3. In the alternative, that the Department reopen the record in this case to allow additional discovery, the taking of new evidence, new hearings, and the filing of supplemental briefs in connection with the many issues that the extra-record statements and testimony raise; and

⁴ On October 1, 2001, Blackstone filed with its Motion to Supplement the Record an unsigned "affidavit" of Mr. James Wojcik. Thereafter, on October 12, 2001, the Company faxed a signed "affidavit" to the Department.

⁵ The Attorney General requests that the Department strike the following extra-record statements and testimony from the Company's Reply Brief: (1) Paragraph 2, p.3; (2) Paragraph 3, p.4; (3) Paragraph 1 & 2, p.6; and (4) Paragraph 1 & 2, p.9.

4. For such further relief that is just and proper.

Very truly yours,

Wilner Borgella, Jr.
Assistant Attorney General
Regulated Industries Division
200 Portland Street, 4th Floor
Boston, MA 02114
(617) 727-2200

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